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Representative Peter Kay, Chairman
Committee on the Judiciary
Arizona House of Representatives
House Wing, Capitol Complex
Phoenix, Arizona 85007

Re: I79-092 (R78-265)

Dear Representative Kay:

Your letter of September 5, 1978 asks our interpretation of A.R.S. § 36-1772.F. That statute reads in part:

F. The director is empowered to adopt such rules and regulations for purposes of implementation, regulation, and enforcement of the provisions of this article [the comprehensive vehicle emissions inspection program], including:

...

2. The exemption from inspection of:

...

(b) A motor vehicle over thirteen years old.¹

¹. Since its original enactment in Chapter 158, Laws 1974, the phraseology chosen for exempting "elderly" vehicles has been exactly the same, viz, "a motor vehicle over _____ years of age." Chapter 182, Laws 1976, changed the number from fifteen to thirteen.

Acting pursuant to the authority cited above, the Director of the Department of Health Services has adopted the following regulation:

A. All vehicles to be registered or re-registered in Maricopa and Pima Counties for highway use shall be inspected in accordance with this Article at a State station or at a fleet station except for the following:

1. Vehicles over thirteen years of age by model year.

A.C.R.R. R9-3-1003.A (emphasis supplied.)²

Model year is defined as follows:

27. "Model year" means the date of manufacture of the original vehicle within the annual production period of such vehicle as designated by the manufacturer or if a reconstructed vehicle the first year of titling.
A.C.R.R. R9-3-1002.27.³

There are -- at the least -- three ways of calculating whether a motor vehicle is "over thirteen years old" at the time it is sought to be registered:

Method 1. Determine its date of manufacture (or initial sale, if manufacture date is too hard to ascertain). If that date occurred over 13 years before the last day of the month in which registration is to occur, then the vehicle is "over thirteen years old". This method is akin to that used to determine human age. This method also pays no heed to the "model year" of the vehicle.

2. This regulation was first adopted on January 13, 1976, and originally used "fifteen" instead of "thirteen." It was later changed to conform to Chapter 182, Laws 1976, but the phraseology has remained unchanged.

3. As adopted originally on January 13, 1976, the word "actual" preceded "manufacture" in the first line of this definition. On January 3, 1977, "actual" was deleted apparently because it was believed to be confusing.

Method 2. Subtract the model year of the vehicle from the current model year of the same make of vehicle at the end of the month in which registration is to occur. If the answer is 14 or a greater number, then the vehicle is "over thirteen years old".

Method 3. Subtract the model year of the vehicle from the calendar year of the month in which registration expires. If the answer is 14 or a greater number, then the vehicle is "over thirteen years old." (This method is akin to that used to determine the age of horses.)

Like Method 2, and unlike Method 1, Method 3 deals only with whole numbers. That is, the first time a vehicle is "over thirteen years old" is when it is fourteen years old. No allowance for vehicles between 13 years and 14 years of "age" is made.

Since the inception of the emissions testing program, the Department of Health Services -- and thus county assessors' offices -- have used Method 3 to determine whether a vehicle is "over thirteen years old" and thus exempt from inspection. While we do not know precisely the reasons for this choice, we think it is clearly within his authority. Administratively, Method 1 poses difficulties. It appears the only way to make it work would be to require owners of vehicles in the thirteen-year-old group to show the date of original manufacture or original sale. The records of the Motor Vehicle Division simply do not contain that information, nor do the County Assessors' offices have such information. Further, this method is arguably unfair to those owners of thirteen-plus-year old vehicles who could not establish one of the above dates. Such vehicles would not be exempted even though in some cases the vehicles would actually be "older" than same-model-year vehicles that could be exempted.

Method 2 also seems to pose administrative hardships. It would require DHS and county assessors to be informed annually by manufacturers of the date of introduction of each marque, and to include that information in calculating age of vehicles. Not only would this be time -- and manpower -- consuming, but also imprecise. (E.g., what happens when a manufacturer fails to supply the data in a timely manner; what happens if a marque is no longer being manufactured; what happens if different models of the same marque are introduced at different times?)

Method 3 is easiest of application. It does not require resort to "outside" information (from either owner or manufacturer) for its application. To determine a vehicle's age for purposes of the regulations the model year of the vehicle is subtracted from the year in which the vehicle's registration expires.

On January 3, 1979, the Department of Health Services codified this three-year-old method of determining vehicle age by promulgating a new § R9-3-1003.B which reads:

For purposes of this section over thirteen years of age by model year means that the calendar year of the expiring registration minus the model year of the vehicle as listed on the title or registration card exceeds thirteen years.

We believe that the regulation contravenes § 36-1772F(2) if it is used to "freeze" the age of a vehicle at 13 years. For example, if a 1965 vehicle has a registration expiring in 1978, but for whatever reason its re-registration is not sought until 1979 the vehicle is by any method of computation over 13 years old - yet R3-9-1003.B would seem to require that the vehicle be emissions inspected. If used to deny exemption in such cases, we believe the rule is outside the legislative standard and thus invalid. See A.R.S. 41-1002.01A (2) and e.g., Hernandez v. Frohmiller, 68 Ariz. 242 (1949). Our certification of the rule failed to take this interpretation into account.

In all other respects we think the method of administratively computing the age of a motor vehicle for purposes of the emissions inspection program is valid. In determining the proper construction of a statute, the interpretation of the statute by regulations or other official pronouncement of the executive body which administers it is entitled to great weight. Long v. Dick, 87 Ariz. 25, 28, 347 P.2d 581, 584 (1959); Police Pension Board of City of Phoenix v. Warren, 97 Ariz. 180, 186, 398 P.2d 892, 895, (1965), reh. den., 97 Ariz. 301, 400 P.2d 105, (1965). See Generally 2 Am. Jur. 2d Administrative Law § 241 (1962).

Particular deference should be accorded an administrative interpretation of a statute when, subsequent to such interpretation, the statute is amended or re-enacted without overriding the interpretation. Long v. Dick, 87 Ariz. at 29, 347 P.2d at 584; Jenney v. Arizona Express, Inc., 89 Ariz. 343, 346, 362 P.2d 664, 667, (1961). The courts feel that by not contradicting the administrative construction of a statute the Legislature has, in effect, acquiesced in the construction.

Since the adoption of the regulations, three sessions of the Legislature have had an opportunity to question and alter the Department of Health Service's statutory construction. Despite the enactment of major amendments to the statutes governing the administration of vehicle emissions inspection program by the 1976 and 1977 sessions of the Legislature, nothing was done (except shorten the vehicle age for exemption from fifteen to thirteen years) to change the language of the exemption⁴. Moreover, several thousand vehicle owners as well as the governmental entities administering the motor vehicle registration program have relied upon the regulations in determining the age of vehicles for purposes of the exemption.

We note in conclusion that the Legislature itself has not been consistent in expressing motor vehicle age. Compare A.R.S. § 36-1772F ("vehicle over 13 years old") with § 28-955C (vehicles ... of the 1968 model year), with § 28-341A ("vehicle bearing a date of manufacture of the year 1915 or before") and with § 28-341.02A ("vehicle bearing a model year date of original manufacture that is twenty-five years old or older.")

Except for the "freezing" problem noted above, this Office can find no reason to overturn the administrative interpretation placed on the exemptions contained in A.R.S. § 36-1772.F. by the Department of Health Services. Of course, the Legislature remains free to codify a different method of establishing an "elderly" vehicle exemption from the vehicle emissions inspection program.

Sincerely,



BOB CORBIN
Attorney General

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4. As indicated above, see notes 1 and 2, the 1976 Legislature (in late June) amended § 36-1772.F, but did not change the phraseology of the exemption.